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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re PABLO M., a Person Coming Under the Juvenile Court Law.	B148524 (Super. Ct. No. FJ23713)
THE PEOPLE, Plaintiff and Respondent, v. PABLO M., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Gibson Lee, Judge. Modified and affirmed.

Lisa M. Bassis, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Marc E. Turchin, Acting Senior Assistant General, Susan D. Martynec and Timothy M. Weiner, Deputy Attorneys General for Plaintiff and Respondent.

Pablo M. was found to be a person described under the provisions of Welfare and Institutions Code section 602,[1] based on a finding that he committed an assault and battery. He claims the court abused its discretion in committing him to camp placement, and that the period of confinement was improper. We find the selection of camp within the court's discretion, but find that the maximum period of confinement should not have exceeded six months. We modify the order accordingly.

FACTUAL AND PROCEDURAL SUMMARY

In November 2000, while in placement at Boys and Girls Town, 13-year-old Pablo M. verbally threatened another youth, then pushed him several times. Pablo had to be restrained by staff members. The District Attorney filed a petition pursuant to section 602, alleging that Pablo had committed the offense of assault and battery in violation of Penal Code section 242. The petition was sustained, and the court ordered Pablo placed in the camp community placement program for a period not to exceed one year. He appeals from this order.

DISCUSSION

I

Pablo does not challenge the factual basis for the sustained petition. He challenges the court's dispositional order, committing him to camp community placement. He argues that this was an abuse of discretion because "[n]one of the intermediate steps such as home on probation or suitable placement had ever been tried or failed."

"We review a commitment decision only for abuse of discretion, and indulge all reasonable inferences to support the decision of the juvenile court. [Citations.]"

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[1] All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

(*In re Asean D.* (1993) 14 Cal.App.4th 467, 473.) A juvenile court is not required to attempt less restrictive alternatives before ordering a specific commitment. (*Ibid.*; see also *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 575-576.) What the court must do, however, is consider the age of the minor, the circumstances and gravity of the offense committed by the minor, and the minor's previous delinquent history. (§ 725.5.) In this case, the court gave appropriate consideration to these factors and did not abuse its discretion in its commitment decision.

The record before the juvenile court revealed that Pablo had a troubled family history coupled with out of control behavior. Dependency jurisdiction had been assumed over Pablo and his siblings (for the second time) in October 1999, 13 months before the current offense. During the course of that case, Pablo's mother asked for help with Pablo "because he was becoming incorrigible." She reported that he had truancy problems, behavioral problems at home and at school, and was being negatively influenced by a gang at their housing project. According to an assessment by the Department of Children and Family Services (DCFS), mother was having difficulty controlling Pablo's behavior and was in need of services including counseling and additional parent training. DCFS reportedly began providing voluntary maintenance services to the family in November 1999.

In March 2000, Pablo was found in possession of marijuana on school grounds. He was expelled from his middle school and a section 602 petition was filed for that offense. In the probation report in that case, the officer reported that Pablo, his mother, and the social worker all believed Pablo would be better off in a placement setting rather than at home. Also included in that report, dated June 6, 2000, was the following assessment: "The minor that stands before the court is at a crossroads in his development. The minor has seen first hand the abusive nature of a father in the household, and according to the case social worker report, is actively projecting a negative attitude towards his mother and his siblings. . . .

[¶] The minor is not attending school and is involving himself in the gang subculture (Ramona Gardens). The minor is desirous of a change in his life, by removing himself from his present involvement at home and being placed in what he perceives as a secure (group home) environment." Pablo was placed on informal probation supervision pursuant to section 654.2, and required to perform 50 hours of community service. He was voluntarily placed in foster care.

On August 17, he was arrested for possession of marijuana on school grounds. That matter was closed in the interests of justice. Pablo had three other disciplinary notations at school, and his grades were very poor.

Pablo was arrested for the current battery offense on November 7, 2000, while in placement at Boys and Girls Town. The victim had to be taken to the hospital as a result of the incident. Pablo was removed from the placement and returned to his mother's home. According to the probation officer's November 21 report, Pablo "has been placed in several foster homes. Each time he is removed for bad behavior. The last foster home, he was removed for punching another foster minor. And at Boys and Girls Town the minor was arrested for battery." He had been enrolled at the middle school for one week, during which time he had been suspended twice.

The January 19 probation officer's report described an incident on Christmas, when Pablo was brought home by the police. He had been riding around in a car with other teenagers after curfew, and one of them had a gun. Two nights later, Pablo did not return home, and his mother had to call police to find him and bring him home. Pablo's mother was concerned about the safety of the younger children at home because of Pablo's violence toward them.

According to the officer: "Since the minor's last court hearing he had the opportunity to prove to the court that he was serious about improving his behavior so he could remain in the home of the mother. But the minor shows no signs of

stopping his delinquent behavior. . . . [¶] The minor openly shows contempt for his mother, probation, and the police. The probation officer has seen the minor talk to his mother with disrespect, and he has no fear of the police. He was back on the streets after he narrowly escaped arrest a couple of nights before."

The court considered this history, and was concerned with the number of placements, Pablo's failure in placements, his aggressive behavior, and his mother's inability to control his behavior. Pablo's continuing violent and aggressive behavior, and his failure to improve his behavior in any of the less restrictive placements provide strong support for the court's conclusion that Pablo was "really close to being out of control," and hence that camp placement was appropriate. There was no abuse of discretion.

II

Pablo claims the court improperly sentenced him to a maximum term of confinement of one year instead of six months. He is correct. The maximum term for misdemeanor assault and battery in violation of Penal Code section 242 is six months. (Pen. Code, § 243.)

Respondent argues that the battery occurred at the Boys and Girls Town facility, which is a school within the meaning of Penal Code section 243.2, and hence the offense was punishable with the one-year term. But the petition did not allege a battery on school property, nor was there any evidence that Boys and Girls Town is such a facility. The sentence cannot be justified on this basis.

The commitment order must be modified accordingly.

DISPOSITION

The order is modified to reflect a maximum period of confinement of six months, and in all other respects, the order is affirmed.

NOT TO BE PUBLISHED.

EPSTEIN, J.

We concur:

VOGEL (C.S.), P.J.

HASTINGS, J.